(4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.

WRIT PETITION NO. 2238 /2003
(Petition under article 226/227 of the Constitution of India)

PETITIONERS : 1) **M/s Sai Vishwash Rice** Mill, village Karanja, Bhilai, Distt. Durg (C.G.) through its partner / Proprietor, Manohar Gyanchandani, aged about 34 years, S/o G. Gyanchandani, R/o 12 Kadambini Nagar, Durg (C.G.)

2) M/s Sonu Traders, Karanja Bhilai, Durg (C.G.) through its partner / proprietor Gurmindar Singh, aged about 28 years, S/o Sardar Kashmir Singh, R/o Kelawadi, Distt. Durg (C.G.)

P. R. No. 20557
Presented by Shri VISHNU KOSHTA
dated 28.03.03

VERSUS

RESPONDENTS 1) Chhattisgarh State Civil Supplies Corporation Ltd. Bal Ashram Bhawan, Kachhahari Chowk, Raipur (C.G.)

2) District Manager, Chhattisgarh Civil Supplies Corporation Limited, Durg Distt. Durg (C.G.)

3) The Collector cum Food Controller, Durg, Distt. Durg (C.G.)

4) The Branch Manager, Chhattisgarh State Warehousing Corporation, Dhamdha Naka, Durg (C.G.)

5) The Deputy Director, Food and Medicine Department Durg, Distt. Durg (C.G.)

6) Shri B.N. Murthy, Food Controller, Collectorate Office, Distt. Durg (C.G.)

7) Shri Pradeep Richhariya, Astt. Food Officer, Collectorate Office, Distt. Durg (C.G.)

8) Shri Tarun Rathore, Food Inspector, Collectorate Office, Durg, Distt. Durg (C.G.)

उपायुक्त ... तहसील कार्यालय

REGISTERED COPY.
CLERK TO A.G. BILASPUR

(2)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT OF MANDAMUS OR ORDERS AND DIRECTIONS ETC.

182

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.2238/2003

M/s. Sai Vishwash Rice Mill and another

Versus

Chhattisgarh State Civil Supplies Corporation Ltd. and others

---

POST FOR ORDER ON 3RD *FEBRUARY, 2004*

Sd/-
L.C. Bhadoo
Judge

3.02.2004

183

HIGH COURT OF JUDICATURE, CHHATTISGARH (BILASPUR)

Writ Petition No.2238/2003

M/s. Sai Vishwash Rice Mill and another.

Versus

Chhattisgarh State Civil Supplies Corporation Ltd. and others.

Shri Ajay Shrivastava, counsel for the petitioners.
Shri Prashant Mishra, counsel for respondents No.1, 2 & 4.
Shri Ranbir Singh, Govt. Advocate for respondents No. 3 & 5.
Shri Anand Kumar Tiwari, counsel for respondent no.7.
Shri G.D. Gangwani, counsel for respondent no.8.

O R D E R

(Passed on 3rd February 2004)

As per L.C. Bhadoo, J.

By this writ petition under Article 226/227 of the Constitution of India, petitioners have challenged the order dated 08/07/2003 passed by the Collector-cum-Food Controller, Durg, whereby the agreement entered between petitioner no.1 and petitioner no.2 and respondent no.2 for supply for custom milling of the "Arwa Rice" was cancelled and the name of the petitioner was put in the black list.

2 Brief facts leading to filing of this petition are that the State Government of Chhattisgarh and Chhattisgarh State Civil Supply Corporation invited applications for custom milling of Arwa Rice through the Collector-cum-Food Controller, District Durg – respondent no.3 and in response to that petitioners submitted their applications. Petitioners' applications were allowed and the agreement was executed between petitioner no.1 and respondent no.2 on 20/06/2003 (Annexure P/2) and the other agreement was executed between petitioner no.2 and respondent

184

no.2 on 30/01/2003 (Annexure P/3). As per the terms and conditions of the agreement, petitioners started taking paddy from Kisan Rice Mill which is being run by the State Government and after custom milling of said paddy rice, submitted the same in the depot of the respondent no.4 and after due analysis by the Food Inspector and Technical Assistant of Office of the respondent no.2 in District laboratory accepted the rice. Thereafter, on 24/06/2003 petitioner no.1 after custom milling rice submitted a lot no.1195 and after analysis by the Food Inspector and Technical Assistant, the same was refused and as per the condition no.12 of the agreement, petitioner took back the said lot on his own expenses and thereafter again after custom milling the said lot submitted in the depot of the respondent no.4 and after due analysis by the concerned authority, the same was accepted by respondent no.4. However, a show cause notice was issued to the petitioner about the said mistake on 24/06/2003 that the petitioner is not custom milling of the rice as per the agreement and he tried to deliver the broken rice, therefore, why action under Section 7 of the Essential Commodities Act, should not be taken against the petitioner (Annexure P/4). Reply to show cause notice was submitted by the petitioners and thereafter again a lot no. 168 was supplied by the petitioners on 01/07/2003 at the depot of respondent no.4 and a complaint was made by the petitioners that respondents no. 6 to 8 are not analyzing and they are demanding the bride from petitioner no.2 and a letter in the office of respondent no.2 was submitted by the petitioner on 04/07/2003, but in spite of that a lot no. 168 was not analyzed. On 04/07/2003 respondent no.2 sent a notice to the petitioner stating that earlier lot had been analyzed by the analysis authority in presence of your representative Shri Sahu, but even then they again asked the petitioner to remain present on 07/07/2003 at 11.00 a.m. in the office of respondent no.4 so that their lot no.168 can be analyzed which is

185

Annexure P/8. After receipt of notice, petitioner went to depot of respondent no.4 on 07/07/2003 and saw that their lot was not properly situated and said that a lot no.168 has not been analyzed. Even though the petitioner said that as per the Clause 12 of the agreement they are prepared to take back the lot on their own expenses for re-custom milling and submitting the said lot. A letter (Annexure P/12) was given in this respect. However, on 08/07/2003 vide order no.390 respondent no.2 informed the petitioners that the lot no.168 submitted by them after custom milling in the office of respondent no.4 on 01/07/2003 after analyzing, the same has been found defective in which 40% Kanaki, 17% small broken rice and 5% Rabi was found and the same has been rejected and the agreement was cancelled and stopped the bills of the petitioner. The said order has been challenged on the ground that it is without jurisdiction arbitrary and when the lot was rejected it was the duty of the respondents to return back the lot as per the Clause 12 of the agreement which has not been done, therefore, respondent no.3 has violated the condition of the agreement.

3 Return has been filed on behalf of the respondents in which they have denied the allegations made against them by the petitioners saying that the petitioners tried to supply the defective lot in order to accommodate the prescribed standard of rice and after analysis the lot nos.168 and 195 were found defective and petitioners started threatening the respondents that if their lot is not accepted, they will take action against the respondents and the impugned order of the respondent no.3 is invalid because as per the Clause 12 of the agreement, petitioners were required to refer the matter to the Government as the alternative remedy was available to the petitioner, therefore, writ petition is not maintainable.

186

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioners raised only one point that the impugned order has been passed by the respondent no.3 without giving any show cause notice to the petitioners and also without giving an opportunity of hearing, therefore, it is violative of principle of nature justice and same is liable to be quashed on that very ground as they have been put in the black list. Therefore, the fundamental right of the petitioners has been infringed which is in violation of fundamental rights enshrined under Articles of 14 and 19 (1) (g) of the Constitution of India.

6. However, learned counsel for the petitioners has not argued regarding the cancellation of the lot no.168 of the petitioners and violation of Clause 12 of the agreement by the respondents. Learned counsel for the petitioners has rightly not raised the second point because there are disputed facts. The allegations of the petitioners were that the respondents no. 6 to 8 were demanding money and since the petitioners have not paid same , respondents had rejected their lot. On the contrary, the respondents have said that the rice supplied by the petitioners was put to analysis by the Food Inspector and Technical Assistant Inspector and the same was found defective as the broken rice was up to the extent of 40%, and on the other ground also it was found that 17% of small broken rice and 5% of Rabi were there. Therefore, these are the disputed facts and the report prepared in this case after examining the rice supplied by the petitioner cannot be questioned in this writ petition. Therefore, only one question remains before the Court to be decided that as to whether the principle of natural justice has been violated by the respondents while issuing the impugned order.

(182)

7. Learned counsel for the respondents submitted that proper opportunity was given to the petitioners. In the first instance, the lot no.195 supplied by the petitioner was defective and the same was returned and second time it was accepted. Similarly, the lot no. 168 was also defective that could not have been accepted. Instead of supplying the rice of the prescribed standard, petitioners started threatening and leveling false allegations against the respondents. Therefore, the Collector-cum-Food Controller has rightly passed the impugned order.

8. Learned counsel for the petitioners relied on the decision of the Apex Court in the matter of Raghunath Thakur Vs. State of Bihar, reported in AIR 1989 Vol. 76 Page no.620, in which Hon'ble the Apex Court held that;

> "19(1)g) – Black listing – order has civil consequence for future business of person concerned – Person affected by order has right of being heard and making representations against order even through rules do not provide expressly".

The other decision relied upon by learned counsel for the petitioners is in the matter of Erusian Equipment and Chemicals vs. State of West Bengal and Another and Union of India and Others vs. A.K. Mithiborwala and Others reported in (1975) 1 SCC 70 in which the Hon'ble Apex Court held that:

> "Black listing – Party black listed entitled to a notice to be heard before his name is put on the black list – Administrative law – Natural Justice – Hearing – Constitution of India – Article 298 and Part III of the Constitution – Blacklisting and the right to equality under Article 14 and the right of business under Article 19(1)(g)."

The other decision relied upon by the learned counsel for the petitioner is in the matter of Haji Abdul Shakoor and Co. vs. Union of India and Others reported in AIR 2002 SC 2423, in which it has been held that:

> "Contract carrying capacity of contractor – Reduction in – Resulting in conversion of status of contractor from class "A" to class "B" contractor – Said order was passed by Authority without giving opportunity of hearing to contractor – Further it was also non-speaking order – Therefore liable to be set aside."

9. There is no dispute that the petitioners were entitled for the notice and opportunity of hearing before cancellation. It has been mentioned in Para-5.16 of the petition at page No.12 that the impugned order is without jurisdiction and arbitrary as per conditions of the agreement and the ground taken by the petitioners. It has been mentioned that the order is without jurisdiction and as per clause 12 of the agreement, the respondents were required to return the rice which has not been done, therefore, the order is illegal and arbitrary. In the whole petition it has nowhere been mentioned that the impugned order was passed without giving notice to the petitioner and without giving proper opportunity. Thus, the principle of natural justice has been violated and without raising this ground specifically in the petition, the counsel for the petitioner is not entitled to raise this point while arguing the matter. Unless the petitioner raised this ground specifically for quashment of impugned order on the ground of violation of principles of natural justice the respondents are taken by surprise as they have not been able to file their reply in this regard. In the given situation the petitioners cannot be allowed to raise new ground which has not been raised in the petition to

(189)

surprise of respondents. No other point was argued by the learned counsel for the petitioners.

10. In the result, the petition of the petitioners is liable to be dismissed and is dismissed.

Sd/-
L.C.BHADOO
Judge

3/4/02/2004

Raju